

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE CIM-SQ TRANSFER CASES

Case No. 5:20-cv-06326-EJD

This Document Relates To:

ORDER OF SERVICE

23-cv-04795; *Odell v. Bloomfield et al.*

INTRODUCTION

Plaintiff, a California prisoner proceeding *pro se*, filed this civil rights case under 42 U.S.C. § 1983 alleging that 12 Defendant California Department of Corrections and Rehabilitation (CDCR) officials were responsible for his contracting COVID-19 in July 2020, and that Defendant Dr. Xu/Tzue, his primary care provider, was deliberately indifferent to his need for medical care for post-covid syndrome. Plaintiff has been granted leave to proceed *in forma pauperis*. Dkt. No. 10. The Court dismissed Plaintiff's complaint with leave to amend on January 8, 2024, finding that Plaintiff had presented a cognizable claim against Dr. Xu/Tzue for deliberate indifference to his medical needs in the treatment of plaintiff's COVID-19 and other medical issues, but directing Plaintiff to present allegations against the other 12 Defendants who he had named. Dkt. No. 9. Plaintiff filed an amended complaint with allegations about the other 12 Defendants but not including the allegations against Dr. Xu/Tzue. Dkt. No. 13. The Court construes the amended complaint as a supplement to the original complaint, and will review both together for screening pursuant to 28 U.S.C. § 1915A. For the reasons discussed below, the complaint is ordered served on additional Defendants.

This case has been consolidated with cases in this district related to the 2020 prisoner transfer and related to the first case filed, No. 5:20-cv-06326-EJD, which now has the caption “In Re CIM-SQ Transfer Cases.” Pro se prisoner cases that are part of the consolidated matter are stayed except for the purposes of service. Service shall therefore proceed in Mr. Odell’s case as ordered below, but the case will remain stayed for all other purposes. The docket for Case No. 23-cv-04795 and all other individual dockets have been closed. If Mr. Odell wishes to file any motions, he must file them in Case No. 5:20-cv-06326-EJD and include his original case number, No. 23-cv-04795, on the left side of the heading.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See United States v. Qazi*, 975 F.3d 989, 993 (9th Cir. 2020).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). While Rule 8 does not require detailed factual allegations, it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.*

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v.*

1 *Atkins*, 487 U.S. 42, 48 (1988).

2 **B. Legal Claims**

3 Plaintiff's original complaint alleges that on July 7, 2020, he was diagnosed with COVID-
4 19 at San Quentin State Prison (now called San Quentin Rehabilitation Center or SQRC). He
5 suffered severe symptoms and passed out while taking a shower. Plaintiff was taken to the
6 hospital where a doctor said that he had suffered a seizure, fractured ribs, nerve damage to his
7 hand, arm and shoulder. Doctors also found that Plaintiff had a heart condition and prediabetes
8 and advised him to see a neurologist and cardiologist. Plaintiff was released back to the prison but
9 was suffering from his heart condition, nerve damage to his hand, arm and shoulder, dizziness,
10 headaches, joint pain and other issues. Plaintiff states that defendant Dr. Bing Xu/Tzue only gave
11 plaintiff aspirin because the COVID-19 was resolved. Plaintiff's condition continued to worsen
12 but Dr. Xu/Tzue did not provide effective medication. Plaintiff was taken back to the hospital
13 where a lesion was found on his brain. Two years later plaintiff was diagnosed with post COVID-
14 19 syndrome. Liberally construed, Plaintiff presents a cognizable claim against Dr. Tzue for
15 deliberate indifference to his medical needs in the treatment of plaintiff's COVID-19 and other
16 medical issues.

17 Plaintiff's supplemental complaint alleges that the 12 Defendant CDCR officials violated
18 his rights under the Eighth Amendment by being involved in some way in the transfer of over 100
19 inmates, some of whom were infected with COVID-19, from the California Institution for Men
20 (CIM) to SQRC in May 2020, causing an outbreak during which Plaintiff became infected.

21 Plaintiff alleges that Defendants Ron Davis, Ron Bloomfield, Ralph Diaz, Kathleen Allison, the
22 Estate of Dr. R. Steven Tharratt, Dr. Joseph Bick, Dr. L. Escobell, and Dean Borders approved of
23 the transfer despite knowledge of its risks; and Defendants Dr. Pachynski, Clarence Cryer, and Dr.
24 Shannon Garrigan failed to implement emergency health orders at SQRC. Liberally construed,
25 Plaintiff states a cognizable claim against these defendants for deliberate indifference to his safety.

26 Plaintiff also alleges that Defendant Clark Kelso, the federal medical receiver, approved of
27 the transfer, but Dr. Kelso has quasi-judicial immunity and will therefore be dismissed. *See*
28 *Harris v. Allison*, No. 20-CV-09393-CRB, 2022 WL 2232526, at *1 (N.D. Cal. June 7, 2022)

(dismissing Kelso from a case raising materially similar allegations as those made here); *In re CIM-SQ Transfer Cases*, No. 22-mc-80066-WHO at Dkt. No. 63 (N.D. Cal. July 21, 2022) (same); *Patterson v. Kelso*, 698 F. App'x 393, 394 (9th Cir. 2017) ("Kelso is entitled to quasi-judicial immunity" with respect to negligence claim).

Plaintiff seeks declaratory relief, injunctive relief "ordering CDCR-San Quentin whatever modifications [the Court] deems prudent as well as attend to all of plaintiff's present and future medical needs/ailments," compensatory and punitive damages, and costs. Dkt. No. 11 at 8, Dkt. No. 13 at 8.

CONCLUSION

For the reasons set out above,

1. The Court dismisses Defendant Kelso.
2. The Court orders that service on the following Defendants shall proceed under the California Department of Corrections and Rehabilitation ("CDCR") e-service program for civil rights cases from prisoners in the CDCR's custody:

- a. Dr. Xu/Tzue
- b. Ron Davis
- c. Ron Bloomfield
- d. Ralph Diaz
- e. Kathleen Allison
- f. The Estate of Dr. R. Steven Tharratt
- g. Joseph Bick
- h. Dr. L. Escobell
- i. Dean Borders
- j. Dr. Pachynski
- k. Clarence Cryer
- l. Dr. Shannon Garrigan

In accordance with the program, the Clerk of the Court is directed to serve on the CDCR via email the following documents: the operative complaint and supplemental complaint (Dkt.

Nos. 11, 13), this order, a CDCR Report of E-Service Waiver form, and a summons. The Clerk also shall serve a copy of this order on Plaintiff.

No later than 40 days after service of this order via email on the CDCR, the CDCR shall provide the court a completed CDCR Report of E-Service Waiver advising the court which Defendant(s) listed in this order will be waiving service of process without the need for service by the United States Marshal Service ("USMS") and which Defendant(s) decline to waive service or could not be reached. The CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the California Attorney General's Office which, within 21 days, shall file with the Court a waiver of service of process for the defendant(s) who are waiving service.

Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each Defendant who has not waived service according to the CDCR Report of E-Service Waiver a USM-205 Form. The Clerk shall provide to the USMS the completed USM-205 forms and copies of this order, the summons and the operative complaint for service upon each Defendant who has not waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E-Service Waiver.

3. All Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant to Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of such service unless good cause can be shown for their failure to sign and return the waiver form.

4. All communications by Plaintiff with the Court must be served on Defendants' counsel by mailing a true copy of the document to Defendants' counsel. The Court may disregard any document which a party files but fails to send a copy of to his opponent. Until Defendants' counsel has been designated, Plaintiff may mail a true copy of the document directly to Defendants, but once Defendants are represented by counsel, all documents must be mailed to counsel rather than directly to Defendants.

5. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the

1 Court informed of any change of address and must comply with the Court's orders in a timely
2 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
3 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
4 pending case every time he is moved to a new facility.

5 6. Any motion for an extension of time must be filed no later than the deadline sought
6 to be extended and must be accompanied by a showing of good cause. Plaintiff is cautioned that
7 he must include the case name and case number for this case on any document he submits to the
8 Court for consideration in this case.

9 7. The case will remain stayed for all purposes other than service of the complaint on
10 defendants.

11 **IT IS SO ORDERED.**

12 Dated: March 7, 2025

A handwritten signature in black ink, appearing to read 'Edward J. Davila', written over a horizontal line.

EDWARD J. DAVILA
United States District Judge